

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3
4 CORRECTED SUMMARY ORDER

5
6 **RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT.**
7 **CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS**
8 **PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND**
9 **FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER**
10 **PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH**
11 **PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION**
12 **MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE**
13 **NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS**
14 **AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE**
15 **WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT**
16 **<http://www.ca2.uscourts.gov/>), THE PARTY CITING THE SUMMARY ORDER MUST**
17 **FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE**
18 **PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY**
19 **REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE**
20 **CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE**
21 **DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.**

22 At a stated term of the United States Court of Appeals for the Second Circuit,
23 held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street,
24 in the City of New York, on the 3rd day of January, two thousand seven.

25 PRESENT:

26 HON. THOMAS J. MESKILL,
27 HON. JON O. NEWMAN,
28 HON. PETER W. HALL,

29 *Circuit Judges.*

30 WOMEN'S INTERART CENTER INC.,

31 *Plaintiff-Appellant,*

32 v.

No. 05-4871-cv

33 NEW YORK CITY ECONOMIC DEVELOPMENT
34 CORPORATION, ANDREW M. ALPER, President of EDC,
35 JERILYN PERINE, Commissioner, Department of Housing
36 Preservation and Development, THE CITY OF NEW YORK,
37 DANIEL DOCTOROFF, Deputy Mayor, MICHAEL
38 BLOOMBERG, Mayor, City of New York,

2 For Plaintiff-Appellant:

MARIANN MEIER WANG (Matthew D.
3 Brinckerhoff, *on the brief*),
4 Emery Celli Brinckerhoff & Abady LLP,
5 New York, NY

6 For Defendants-Appellees:

DONA B. MORRIS (Michael A. Cardozo,
7 Francis F. Caputo, Susan M. Shapiro, *on the*
8 *brief*),
9 Corporation Counsel of the City of New
10 York,
11 New York, NY
12

13 Appeal from the United States District Court for the Southern District of New York
14 granting summary judgment to Defendants-Appellees (Batts, *J.*).

15 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND**
16 **DECREED** that the judgment of the District Court is **AFFIRMED**.

17 Plaintiff-Appellant Women’s Interart Center, Inc. (“the Center”) appeals from the August
18 2005 judgment of the District Court for the Southern District of New York granting summary
19 judgment to Defendants-Appellees New York City Economic Development Corporation
20 (“EDC”), the City of New York (“the City”), and various City employees, including Jerilyn
21 Perine, past Commissioner of the Department of Housing Preservation and Development
22 (“HPD”). The Center filed the present lawsuit asserting state and federal claims after the EDC
23 terminated its contract to sell the Center a building that was to become the Interart Rehearsal
24 Studio and Cultural Center (“IRSC”). We assume the parties’ familiarity with the underlying
25 facts and procedural history.

1 As the Center does not sufficiently challenge in its briefs the District Court’s conversion
2 of the Rule 12(b)(6) motion into a motion for summary judgment, or the striking of its motion for
3 a preliminary injunction, only the grant of summary judgment on the two federal claims is before
4 us. *See Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998). We review the District Court’s
5 grant of summary judgment de novo. *See Steel Partners II, L.P. v. Bell Indus., Inc.*, 315 F.3d
6 120, 123 (2d Cir. 2002). The District Court properly granted summary judgment in this case.

7 To establish a First Amendment retaliation claim, a plaintiff must show that “(1) his
8 conduct was protected by the First Amendment, and (2) such conduct prompted or substantially
9 caused defendant’s action.” *Dougherty v. Town of N. Hempstead Bd. of Zoning Appeals*, 282
10 F.3d 83, 91 (2d Cir. 2002) (internal citations omitted).

11 With respect to the first requirement, neither party disputes that the Center’s affirmative
12 litigation and public complaints in the 1980s concerning the proposed homeless shelter and
13 development of the Clinton Urban Renewal Area constituted activity protected by the Petition
14 Clause of the First Amendment. However, the parties dispute whether the Center’s rent and
15 repair disputes with the City in the 1990s were protected by the Petition Clause. For purposes of
16 this appeal, we will assume that the Center’s activities concerning these disputes were protected.

17 With respect to the second requirement for establishing a First Amendment retaliation
18 claim, the Center has failed to demonstrate that its protected activities in the 1990s prompted or
19 substantially caused the EDC to terminate the contract. Even if Perine did know about these
20 activities, and even if we assume that rent and repair disputes constitute activities protected by
21 the First Amendment, the Center cannot show that Perine’s animus was the sole or substantial
22 motivating factor in the EDC’s decision to terminate the contract of sale. Indeed, the evidence

1 indicates that she was not involved at the time of termination. Conclusory allegations, which are
2 not in short supply in the Center's briefs, cannot alone survive a motion for summary judgment.
3 *See Ying Jing Gan v. City of New York*, 996 F.2d 522, 532 (2d Cir. 1993).

4 The District Court properly granted summary judgment on the equal protection claim. No
5 reasonable jury could find that the Center was similarly situated to the Ensemble Studio Theater
6 ("EST"). *See Clubside, Inc. v. Valentin*, 468 F.3d 144, 159 (2d Cir. 2006). The fact that the EST
7 may have made an alternative proposal to develop the property in question does not in and of
8 itself lead to the conclusion that it was in a similar situation as the Center with respect to the
9 contract.

10 Finally, we note that the Center's attacks on Perine's professional reputation do not
11 support its case and have no place in a brief to this Court. For the reasons stated above, the
12 judgment of the District Court is hereby **AFFIRMED**.

13 FOR THE COURT:
14 THOMAS ASREEN, ACTING CLERK
15 By:
16 _____